

**United States District Court
Southern District of Ohio
Western Division**

Shirdenia Bryant, et al.,
Plaintiff

No. C-1-02-006

vs.

Spiegel, J.; Novotny, MJ

Prescott Bigelow IV,
Defendant

ORDER

Before the court is plaintiffs' motion for leave to depose witness Amy Clements (Doc. 43) and defendants' response in opposition (Doc. 51).

For the following reasons the motion shall be DENIED:

1. The instant motion was filed on October 21, 2003. The discovery deadline of October 1, 2003 had already past when the motion was filed.

2. Although plaintiffs' motion is accompanied by a Local Rule 37.2 affidavit of counsel setting forth the extrajudicial means by which counsel attempted to resolve this matter before filing the motion, clearly plaintiffs' counsel did not exhaust "all extrajudicial means" as required by Local Rule 37.1. In his affidavit, plaintiffs' counsel fails to mention the September 12, 2003 response from defendant's counsel he received to his final inquiry concerning a deposition of Ms. Clements. Furthermore, plaintiffs' counsel fails to identify any efforts made on his behalf to schedule the Clements deposition after receiving the

response - either before the end of the discovery period or before filing the instant motion five weeks later.

3. Plaintiffs have failed to demonstrate a good faith effort to schedule the requested deposition during the discovery period. While defendant Bigelow may have initially intentionally or unintentionally provided misleading information, he was ultimately cooperative in providing plaintiffs with the necessary information for contacting Ms. Clements. Defendant Bigelow had no obligation to arrange the deposition for plaintiffs' benefit.

Accordingly, it is now Ordered:

1. Plaintiffs' motion for leave to depose witness Clements (Doc. 43) is DENIED.

s/Susan M. Novotny
Susan M. Novotny
United States Magistrate Judge